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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

v.

24 CV 3973 (AS)

LIVE NATION ENTERTAINMENT,
INC., et al.,

Conference

Defendants.

New York, N.Y.
June 27, 2024
11:00 a.m.

Before:

HON. ARUN SUBRAMANIAN,

District Judge

APPEARANCES

UNITED STATES DEPARTMENT OF JUSTICE
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-AND-

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BY: ALFRED CARROLL PFEIFFER, JR.
TIM O'MARA

Also Present:

Sonali Durham
Joseph Ehrenkranz
Cordelia Bell

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(Case called; appearances noted)

THE COURT: Good morning. First of all, thanks to everyone for coming in today. We have a beautiful day in New York, so if you're from out of town, welcome. And thank you, also, to the parties for cooperating and talking with each other to submit the joint letter and proposed schedule. It really reflects a lot of hard work from the parties, and I do really appreciate it.

So let's get started with some disclosures. I appreciate Live Nation noting that they were currently represented by the law firm that I previously worked at, Susman Godfrey. I was not involved in that case, and have no interest in any fees or anything else arising from that representation. I think Live Nation was just making sure that everyone was aware that they were presently represented by Susman Godfrey.

Anything else to address along those lines?

MR. MARRIOTT: That's correct, your Honor, we were just making sure that was disclosed.

THE COURT: In terms of any prior representations I may have had, you can probably plug my name into Law360 and see if anything comes up. If, while you're doing that, you come across any of my opinions, you might want to read them. You may be the only ones, other than the parties in the cases, but like any additional readers, you're always welcome. I think

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1 the only representations to just note for the parties would be
2 my representation of Baltimore in some of the financial
3 products antitrust cases, the opioids litigation. I don't
4 think that that has any relevance here, but I just want to put
5 that on your radar.

6 I also represented some public entities in California
7 in *State of California ex rel. OntheGo Wireless v. Cellco*
8 *Partnership*, 34-2012-00127517, in Sacramento County Superior
9 Court. There's a related case in Nevada, as well, that had to
10 do with False Claims Act allegations relating to cell phone
11 billing. So, I don't think that has any bearing on this case,
12 but just, again, in the interest of full disclosure, I wanted
13 to put it on your radar.

14 Any other issues to address along those lines before
15 we get to this case?

16 MR. MARRIOTT: No, your Honor.

17 THE COURT: Hearing nothing, let's move on.

18 Thank you, again, for the joint letter. Let's talk
19 about the schedule and other issues raised therein.

20 First, Mr. Marriott, maybe we should start with the
21 consent decree and -- the amended final judgment, I should say.

22 What's the relevance of that judgment here in this
23 case, as you see it? And then you can let me know, I think you
24 had raised some questions you might have as to the appropriate
25 forum to raise certain issues, so I'll hear you out there.

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1 MR. MARRIOTT: Thank you, your Honor. May I use the
2 podium?

3 THE COURT: You can use the podium, you can stay
4 seated, whatever is more comfortable.

5 MR. MARRIOTT: I'm sufficiently used to standing, that
6 I'd probably be better off --

7 THE COURT: Let's do it.

8 MR. MARRIOTT: Thank you.

9 So, as we note, your Honor, in our letter, we think
10 there is a threshold question here about whether this is the
11 appropriate forum for this case. We believe, respectfully,
12 that it's not.

13 This case arises out of the merger between Live Nation
14 and Ticketmaster in 2010. That merger was the product of a
15 consent decree and an amendment to that decree -- your Honor has
16 made reference to those -- and the court in the District of
17 Columbia retained jurisdiction to deal with issues related to
18 the consent. And the stated objective, your Honor, at least as
19 we understand the present pleading in this case, the stated
20 objective of this case is to undo the merger between
21 Live Nation and Ticketmaster, notwithstanding the decree and
22 notwithstanding the history of enforcement in the D.C. District
23 Court. So we are concerned, your Honor, that by filing here,
24 what plaintiffs have effectively done is sought to circumvent
25 the decree, to evade the underlying determination in that

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1 decree that the transaction was not anticompetitive, and to
2 frustrate, effectively, defendants' right under the decree to
3 apply to the D.C. District Court for relief that may be
4 appropriate there. So, with that in mind, what we'd like to
5 do, at an appropriate time, your Honor – and we can be prepared
6 to do that promptly – is to file a motion with respect to that
7 issue. I can say more about it now, if you like, but that's
8 the fundamental issue, your Honor, is that we believe the
9 decree is implicated by the allegations here because the relief
10 that counsel for plaintiffs seek is to undo the very thing that
11 the decree brought about, which was the integration of
12 Live Nation and Ticketmaster.

13 THE COURT: Well, is it your position that the
14 judgment would have some type of preclusive effect in this
15 case?

16 MR. MARRIOTT: The consent judgment, your Honor, or
17 judgment by this Court in this case?

18 THE COURT: No. Just to make sure we're talking about
19 the same thing, in 2020, there was the amended final judgment,
20 correct?

21 MR. MARRIOTT: Correct.

22 THE COURT: And that's what you're relying on, that's
23 the last order that we have from Judge Collyer in D.C.?

24 MR. MARRIOTT: That's correct.

25 THE COURT: So, are you saying that that judgment has

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1 preclusive effect in this lawsuit?

2 MR. MARRIOTT: I wouldn't put it exactly that way,
3 your Honor. I wouldn't say that it has preclusive effect.
4 What I would say is that that, and, of course, it depends
5 exactly what counsel here is seeking. Our point is that that
6 consent decree is the thing that allowed the combination of
7 Live Nation and Ticketmaster.

8 THE COURT: I understand that, but if there's no
9 preclusive effect -- and maybe this is a question for
10 Ms. Sweeney -- if in this lawsuit, there's no preclusive effect,
11 and in this lawsuit, my understanding is that the government is
12 not seeking to enforce or construe or undo the judgment with
13 respect to the Section 7 proceeding and the judgment that was
14 entered in that case -- and, Ms. Sweeney, maybe you can just
15 clarify -- in this case, are you seeking to either enforce that
16 judgment, undo that judgment, or construe the terms of the
17 judgment in that case?

18 MS. SWEENEY: No, your Honor. This case is much
19 broader than that consent judgment. We have filed claims
20 against Live Nation, Ticketmaster. We have --

21 THE COURT: When you say it's broader than that, is
22 any part of your case -- are you seeking any judgment from this
23 Court that would either be an effort to enforce the judgment in
24 D.C., to undo that judgment in some way, or to construe the
25 judgment in that case? That's my question.

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1 MS. SWEENEY: No, your Honor.

2 THE COURT: All right.

3 And the claims, as I understand it, that were asserted
4 in D.C. that relate to the judgment were under Section 7 of the
5 Clayton Act; is that correct?

6 MS. SWEENEY: That's correct.

7 THE COURT: In what way is that claim different than
8 the claims asserted in this case by the government?

9 MS. SWEENEY: Well, there's very many differences, and
10 I would just like to start out by saying that I disagree with
11 Mr. Marriott's description of our case and also of the consent
12 judgment.

13 In this case before your Honor, the United States and
14 the plaintiff states have alleged five federal antitrust causes
15 of action, all under the Sherman Act. We have three
16 monopolization claims and two Section 1 unlawful restraint of
17 trade claims.

18 The 2010 consent judgment, that complaint was directed
19 solely at forward-looking conduct, and it was solely a claim
20 under Section 7 of the Clayton Act. Not only are the claims in
21 this case vastly different and vastly broader, but the case
22 alleges an array of anticompetitive conduct across five
23 different relevant antitrust markets.

24 So, there is no comparison between that earlier action
25 and this action.

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1 I'd also like to point out that in this case, the
2 United States is joined by 29 states and the District of
3 Columbia, many of which of those states were not signatories to
4 the consent judgment. So there are different parties, there
5 are different causes of action, and there are very different
6 claims with respect to the allegations of anticompetitive
7 conduct.

8 THE COURT: What about the provisions in, I believe
9 it's, Section 9 of the judgment that speak directly to
10 retaliation and that seem to resonate with some of the
11 allegations that are in the complaint filed in this case? So,
12 if you read it fairly, there are allegations in this case that
13 Live Nation, Ticketmaster took actions that were directly in
14 contravention of their obligations under the judgment.

15 So, how do you respond to that?

16 MS. SWEENEY: Sure. We do allege in this complaint
17 that there have been acts of retaliation and conditioning,
18 which are prohibited by the consent judgment; however, it's
19 also true that conduct can violate other statutes and other
20 consent decrees. And here, we allege that that conduct is
21 part – and it's only one small part, I should point out we have
22 many different kinds of anticompetitive conduct – but it's part
23 of the conduct that supports our claim that Live Nation and
24 Ticketmaster monopolized the market for the provision of
25 primary ticketing services to venues.

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1 THE COURT: Okay. Thank you.

2 Mr. Marriott?

3 MR. MARRIOTT: Yes, your Honor. Thank you.

4 So, we don't disagree that the party matchup is not
5 perfect. There are some plaintiff states here who were not
6 involved in the prior decrees, but there is a substantial
7 overlap. There are a lot of states that were there who are now
8 also here.

9 We do not disagree that the causes of action are not
10 identical. That was a Clayton Act, Section 7, case, and the
11 present case here has Sherman Act claims, which is why I said
12 it isn't exactly preclusive effect, your Honor, that we're
13 arguing. But I do think it's the case, and your Honor hit upon
14 the provision, which is Section 9 of the amended consent
15 decree, which expressly prohibits the very conduct that counsel
16 for plaintiffs is here putting at issue.

17 So, while counsel says that they aren't seeking a
18 declaration as it relates to the decree, I believe, your Honor,
19 at least as we read the complaint, that they are really saying
20 that we engaged in conduct that, if true, would violate the
21 decree. And that, we think, squarely puts the allegations of
22 this case --

23 THE COURT: Doesn't the judgment expire, especially
24 with respect to Section 9, next year, before discovery in this
25 case would even be over?

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1 MR. MARRIOTT: It expires in December of 2025, so
2 discovery in this case technically would be over, but it would
3 be before this case has been issued.

4 THE COURT: I like the assurance that discovery in
5 this case will be over.

6 MR. MARRIOTT: Well, I'm just going off --

7 THE COURT: I baited you in.

8 MR. MARRIOTT: Well, I think we can do that,
9 your Honor.

10 THE COURT: Okay. Understood.

11 That's why I asked you whether there was preclusive
12 effect.

13 Is there any case law that you're aware of in which
14 this situation has arisen where there is a judgment relating to
15 the approval of a merger or a merger that's allowed to proceed
16 over a Section 7 challenge, then later there are efforts to
17 either modify or undo the merger in a Sherman Act case? Are
18 there any prior cases that raise that fact situation?

19 MR. MARRIOTT: We have not found a case in which -- and
20 we are continuing to look, your Honor -- but we have not found a
21 case in which the government has successfully done what we
22 believe they're trying to do here, which is to get a decree in
23 one court, live under that decree for approximately 15 years
24 with the supervising antitrust monitoring judge, and then later
25 go seek effectively to challenge at least some conduct which is

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1 included in a different place, and we believe, again, with
2 respect --

3 THE COURT: And you'd agree that if the government
4 brought its case up December of 2025, you wouldn't have an
5 argument along these lines because the judgment would have
6 fully expired? Parts of it have expired in 2020; the rest of
7 it is going to expire in 2025. So, it's a timing issue. If
8 the government had brought this case in 2026, you'd have no
9 argument that this is the wrong forum for this case, right?

10 MR. MARRIOTT: Well, we certainly wouldn't have the
11 same argument, your Honor -- I'm not so sure we wouldn't have
12 any argument -- and that's because I think they're seeking
13 different relief here, but the fundamental relief, the kind of
14 legal relief that they seek, is to break up the company, and
15 that's the thing that we think is so fundamental to the consent
16 decree. That's the thing that was inherently part of that.
17 It's what the consent decree allowed. It is the thing now
18 they're seeking to undo, albeit in a court different from the
19 court that issued the consent decree.

20 So, the timing is different, but I don't think, given
21 the relief they seek, that that makes this an easily
22 distinguishable circumstance.

23 THE COURT: Okay. Understood.

24 I saw someone who might want to be heard.

25 MR. KASHA: Thank you, your Honor. I'm Jeremy Kasha,

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1 speaking for the State of New York, and on this particular
2 issue, also speaking for the 13 other plaintiff states that are
3 not signatories to the consent decree.

4 It probably goes without saying that we take umbrage
5 at the idea of being transferred to D.C. and probably ending up
6 in the back pews of proceedings that we were never involved in
7 in the first place.

8 But there's another important point. You asked about
9 the area of overlapping allegations with the conduct that is
10 covered by the consent decree. And Ms. Sweeney, for the
11 United States, correctly pointed out that although it's
12 important conduct, that's only a portion of the totality. But
13 I'd like to point out, also, that the conduct in the complaint
14 that is overlapping, which you can see in paragraphs 90 to 93
15 of the complaint, first of all, relates to a venue in New York
16 City, less than 20 minutes away by subway, and, second of all,
17 the facts relating to that postdate the consent decree and even
18 the amended final judgment.

19 Now, the United States Supreme Court in an antitrust
20 case, *Lawlor v. National Screen Service Corporation*, held that
21 a consent decree "cannot be given the effect of extinguishing
22 claims which did not even then exist and could not possibly
23 have been sued upon in the previous case."

24 So, I think it's kind of an open and shut question.
25 We understand perhaps defendants feel they need to go through

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1 the motions to preserve the record, but the states do take
2 umbrage about this, and we believe it would be inappropriate
3 for the case to be transferred.

4 THE COURT: Okay. Thank you.

5 Mr. Marriott, when do you want to make your
6 application?

7 I'll say this: For the reasons that have been raised
8 here, I don't see a basis to transfer this case or dismiss it
9 on the basis of the final judgment in the D.C. proceeding.
10 However, I will certainly permit the defendants to make an
11 application here.

12 When would you like to make that application? Because
13 I don't know that it really turns on what the amended complaint
14 says. Maybe it does. I believe it might.

15 Ms. Sweeney, if I'm right, the amended complaint may
16 add some additional plaintiffs?

17 MS. SWEENEY: That's correct, your Honor, additional
18 state plaintiffs, yes.

19 THE COURT: But there are already plaintiffs in the
20 case that were not parties to the D.C. case, right?

21 MS. SWEENEY: Yes, your Honor.

22 THE COURT: Okay.

23 So, Mr. Marriott, do you have --

24 MR. MARRIOTT: Your Honor, I, likewise, don't think it
25 probably turns -- I haven't seen the amended complaint,

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1 obviously -- but I don't think it turns much on that. Would
2 three weeks be acceptable to the Court for putting in a motion?

3 THE COURT: That's fine.

4 And, Ms. Sweeney, how much time would you need for a
5 response?

6 MS. SWEENEY: Your Honor, I think the local rules
7 allow two weeks. We'd like more than two weeks. Either three
8 or four weeks would be appropriate, in our view.

9 I'm looking at -- the states are also partners in
10 this, but I assume that would be okay.

11 THE COURT: Okay, three weeks.

12 MS. SWEENEY: Okay. Thank you, your Honor.

13 THE COURT: And we'll do one week for a reply.

14 MR. MARRIOTT: Thank you, your Honor.

15 THE COURT: You're not going to get any extensions on
16 page limits. You should be able --

17 MR. MARRIOTT: I think we're good with what we have.

18 THE COURT: Okay, good.

19 So that takes care of the judgment in the D.C. case.

20 Ms. Sweeney, you've indicated that you anticipate up
21 to 80 fact depositions. Is there an issue to raise here along
22 these lines, or are you just giving the court a heads-up that
23 there are going to be a lot of depositions?

24 MS. SWEENEY: Yes, your Honor. Over the past week and
25 a half or so, we've been negotiating with the defendants a

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1 couple of different documents, a proposed protective order, an
2 ESI protocol, and also a deposition protocol. So we have a
3 disagreement with the defendants as to the number of
4 depositions.

5 So we want to bring it to your Honor's attention so
6 that we could resolve that issue and get that order in place so
7 we can begin discovery. And, if you like, I can go through the
8 reasons why we think we need up to 80 depositions.

9 THE COURT: What's the counterproposal?

10 MS. SWEENEY: Defendants have proposed 40.

11 THE COURT: All right. Why do you need 80?

12 MS. SWEENEY: Well --

13 THE COURT: It's a lot of depositions. Even 40.

14 MS. SWEENEY: Absolutely. We agree that's a lot of
15 depositions, your Honor, and we intend to be as efficient as
16 possible, and, hopefully, we wouldn't need to take that many,
17 but we still will need to take a fair number of party
18 depositions. There's very distinct business segments within
19 Live Nation and Ticketmaster. So we anticipate something in
20 the range of 25 depositions of Live Nation and Ticketmaster
21 personnel.

22 And then we have a whole host of nonparties who play
23 an integral role in this industry, and we have to get testimony
24 from them.

25 As we mentioned in the letter, we expect serving a

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1 great many subpoenas, mostly for data on nonparties. So we
2 won't take that many depositions, but we will need to take
3 depositions, for example, from venues, from rival ticketers,
4 from artists, from artist agents, from venue management
5 companies, from ticket brokers. There's a whole different --
6 the industry is organized in such a way, that there are many
7 different entities that have testimony that we will want to
8 bring to light in this case.

9 So, our initial recommendation is for 80 depositions,
10 and, hopefully, we wouldn't actually need that many, but that's
11 what we're thinking now.

12 THE COURT: Okay.

13 Mr. Marriott?

14 MR. PFEIFFER: Your Honor, this is actually mine, if
15 that's okay.

16 THE COURT: All right. Mr. Pfeiffer.

17 MR. PFEIFFER: We clearly disagree that 80 is
18 appropriate. 80 is an extraordinary number of depositions. We
19 proposed 40, which we think is larger than your normal
20 antitrust case.

21 I'm in front of one of your colleagues right now in
22 the tapestry litigation where the parties agreed on 25. That
23 included the Part III proceedings as well, not just the
24 proceedings before Judge Rochon.

25 We think to impose discipline on both sides, to try to

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1 ease the burden on parties, that we should start with a much
2 smaller number. There's always the ability to come to the
3 Court when good-faith dictates a need for an increase, but to
4 start high and hope to end up lower almost never works out.
5 It's one of those work expands to fill the time situations.

6 So, we would urge your Honor to set a much lower cap.
7 We believe 40 is an appropriate number for both sides, and if
8 people need more, we can come back to you.

9 THE COURT: Was that your opening offer, 40
10 depositions? In your earlier discussions, would you have cut
11 it in the middle at 60?

12 MR. PFEIFFER: I confess, I don't remember the exact
13 chess moves, whether we started with 40 or not.

14 THE COURT: Okay.

15 What if we, instead of having a 40-deposition limit,
16 were to have a 300-hour requirement? And so the government can
17 use that however they're going to use it, but it would provide
18 you, roughly, the same number of hours - I added another 20 -
19 but would fit with your 40-deposition limit, it would answer
20 your concern about efficiency and not having 80 seven full-day
21 depositions. At the same time, the government may only need a
22 couple of hours with certain witnesses, and it will give them
23 an incentive to be efficient in their questioning.

24 MR. PFEIFFER: Quick reaction, your Honor: We would
25 hope that the seven hours for any individual deposition cap

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1 would still apply.

2 THE COURT: That still remains, of course.

3 MR. PFEIFFER: I think that would be very acceptable
4 to us, your Honor.

5 THE COURT: Okay.

6 Ms. Sweeney, does that sound reasonable? That way, if
7 you need to take more depositions, you can. And some of these
8 depositions, I am sure, may be in the way of authenticating
9 documents, doing things that are ministerial, where you don't
10 need seven hours, and so you would still have the flexibility
11 to spend more time on the witnesses that you need more time
12 with, and preserving the testimony of witnesses where you may
13 only need a couple of hours for them.

14 MS. SWEENEY: Yeah, I appreciate that, your Honor.

15 And the United States has, in other cases,
16 successfully used the hour limit instead of a number of
17 depositions, and that's probably an appropriate method here.

18 I'm just looking at the math. So, 300 hours would
19 still be within the 40-deposition range, and perhaps if we
20 break it up into hours, that would be sufficient, but we would
21 request maybe going up to 420 hours, which would be 60. I note
22 that in the *Google Search* case, for example, in the District of
23 Columbia, I think the Court permitted 85 depositions per side,
24 which is also a monopolization case, but, in many ways, much
25 simpler than this case.

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1 THE COURT: Okay. I'm going to put in a 300-hour
2 limit on depositions from each side.

3 And, Ms. Sweeney – and this goes for both sides – if
4 along the way, there is some extenuating circumstance, and you
5 believe there is good cause for an expansion of that limit, you
6 can certainly come to the Court. And just to let you know, I
7 will probably say no, but I will hear you out, and I will
8 absolutely hear your arguments, and if you make a good case, I
9 will provide you with relief if you can make a showing of good
10 cause.

11 MS. SWEENEY: Thank you, your Honor.

12 And, your Honor, an important question here: I assume
13 that that only applies to fact depositions and does not apply
14 to expert depositions since, of course, we have no idea how
15 many experts that each side will proffer?

16 THE COURT: That's correct.

17 And Mr. Pfeiffer?

18 MR. PFEIFFER: We agree with that, your Honor.

19 THE COURT: All right.

20 Next, Live Nation suggests that there is a jury trial
21 issue here. I don't think that there is any reason for us to
22 address whether a jury trial right extends to the federal
23 claims or not, but I'm happy to hear you out.

24 Mr. Marriott?

25 MR. MARRIOTT: Your Honor, I don't think we need to

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1 take this issue up now. We just didn't want -- in the forum
2 which contemplated effectively checking the box that there was
3 a jury trial, we didn't want to be waiving our argument that
4 this is not a case where there is a jury trial. We don't think
5 there clearly is a right to a jury trial as to the federal
6 claims, and I don't think plaintiffs are even arguing there's a
7 right as to the federal claims. They seem to have an argument
8 tied to their state claims. We respectfully disagree with
9 that, but we don't think there's anything the Court needs to do
10 with that at this stage. When we know more about these claims
11 and what exactly is pled and contended, the parties will be in
12 a better position, I think, to present an issue to the Court,
13 if there is an issue to then be presented.

14 THE COURT: Okay.

15 Now, just to make sure that we're on the same page in
16 terms of what the law requires, if there are common issues of
17 fact between claims seeking legal relief and seeking equitable
18 relief, you would agree as to those common issues, that courts
19 have held that those would be subject to the jury trial right?

20 MR. MARRIOTT: I would agree courts have held that,
21 your Honor.

22 THE COURT: Okay.

23 So the question is: Are there separate issues of fact
24 that would not be tied to the claims as to which legal relief
25 is sought, and as to those issues of fact, should they be heard

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1 by the jury or heard by the Court?

2 MR. MARRIOTT: That, your Honor, and then the kind of
3 gating question of whether or not there will actually be state
4 law claims that seek legal relief that survive to get to a jury
5 trial. And so we don't think that will actually be the case,
6 we think, in the end, those claims won't survive, and so we
7 don't think -- and that's the hook to get a jury trial, if
8 there is a hook. And so we just wanted to flag it so that we
9 aren't said to have waived the contention that this is not a
10 jury case. We think these are issues that are tried to the
11 courts. We aren't aware of a case where plaintiffs' counsel
12 and the government actually have been allowed to take basically
13 state law claims and use them to bootstrap a jury trial on all
14 issues in the case, and that's the issue we wish to preserve.

15 THE COURT: Understood. Thank you.

16 MR. MARRIOTT: Thank you, your Honor.

17 THE COURT: Next, Live Nation points to the
18 investigative files and asks that they be turned over by
19 July 22nd of this year.

20 Ms. Sweeney, you've probably talked to defendants
21 about this?

22 MS. SWEENEY: We have not, your Honor. They raised
23 that in their letter. But we're prepared to respond today.
24 And, of course, that's something we understand we have to turn
25 over to defendants.

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1 I would say that there's an important first step,
2 which is, we have to have a protective order entered by the
3 Court. We've received confidential documents from a number of
4 nonparties, and we have to be able to (a) provide them notice
5 that they're going to be turned over in this litigation and (b)
6 provide them with a copy of the protective order.

7 So, the parties have been negotiating that protective
8 order, and I'm hopeful that we can get that to you by next
9 week, by July 2nd.

10 And then I would also say that, assuming the
11 protective order is in place, and we can notify the nonparties,
12 substantial compliance with July 22nd shouldn't be a problem,
13 but I don't want to speak to the entirety of the documents,
14 because the 22nd of July is just our 30 days' response period,
15 and I hope we can meet it, but just to be sure. And, also, I
16 cannot speak for the states on this issue.

17 THE COURT: Okay.

18 Is there any different position from the states?

19 MR. KASHA: No. We have the same position, that
20 there, of course, needs to be a protective order and that
21 substantial compliance by that date shouldn't be a problem, but
22 there might be a lot of materials, and there may be things
23 trickling in after that.

24 THE COURT: Okay.

25 Does that suffice for the defendants? It looks like

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1 everyone's on the same page, they're going to try to get the
2 documents to you by July 22nd. Any issue there?

3 MR. PFEIFFER: I don't think so, your Honor. I think,
4 as has been said, with the guidance of some past examples from
5 your Court, we are working on a protective order together and
6 expect to have that to you by early next week, and we really
7 hope to get things promptly.

8 THE COURT: Great.

9 The only thing I really require in the protective
10 order is the clawback provision. That's really for the young
11 lawyers out there who are worried about inadvertently turning
12 over some document, and then they're, like, sweating at night
13 thinking they're going to get in trouble. It's to prevent all
14 of that on both sides.

15 So, if you turn over something, and it turns out it's
16 privileged, you just claw it back, and we will -- if there's a
17 question of whether it's privileged or not, that's a separate
18 issue -- we'll talk a little bit about that -- but I don't want
19 to cause any undue hardship for the parties.

20 MR. PFEIFFER: We understand and appreciate that,
21 your Honor. Thank you.

22 THE COURT: All right.

23 Next, on rebuttal and surrebuttal expert reports: I
24 guess the question I'm always wondering about is, Ms. Sweeney,
25 from where you stand, expert reports are a discovery tool for

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1 the other side, so why do you want to do rebuttal report?

2 MS. SWEENEY: Well, your Honor, first of all, we have
3 the burden of proof, but, also, in this kind of case, there
4 will be a lot of data analysis, presumably, included within the
5 expert reports. Our experts are going to want an opportunity
6 to test the data and the assumptions in the other side's
7 experts and respond to it. For that reason, having a rebuttal
8 opportunity is, in some ways, more efficient than not having
9 one.

10 THE COURT: That's fair.

11 You don't have an issue with the defendants having
12 surrebuttal reports, right?

13 MS. SWEENEY: We do have an issue with that, for the
14 reason I mentioned at the outset, which is that plaintiffs have
15 the burden of proof. And so, just like in motion practice, we
16 wouldn't expect the defendants to have a surreply in all
17 instances or vice versa, whoever is the moving party -- who is
18 not the moving party. So --

19 THE COURT: Don't you want to know what their experts
20 are going to say so you can grill them, whether in deposition
21 or at trial? You're going to have more material to undermine
22 your adversary's position. So, that's why I asked you why you
23 wanted to do a rebuttal report, because Mr. Marriott is going
24 to have more ammunition to depose your expert based on what's
25 in the rebuttal report or there are changes between the opening

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1 report and the rebuttal report, all of those things. You've
2 all done this a million times. So, once you've said, well, no,
3 I actually do want to do the rebuttal report, it seems like you
4 would also want a surrebuttal report on the understanding that
5 both the rebuttal and the surrebuttal reports are going to be
6 strictly limited to new or different material in the report
7 that they are responding to.

8 Mr. Marriott, any issues with that?

9 MR. MARRIOTT: None, your Honor.

10 THE COURT: Okay.

11 So, on those grounds, if you want to put in a rebuttal
12 report, you probably want to see what the response to that
13 rebuttal report is going to be before your expert is going to
14 take the stand or before there's a summary judgment motion
15 based on arguments made about the rebuttal report that you're
16 just not familiar with because you didn't have a chance to
17 review them in advance.

18 MS. SWEENEY: One final suggestion, your Honor, and
19 that would be, if we are going to have those dueling reports,
20 then we could have simultaneous exchange. That's one option
21 that the United States has used in other antitrust cases.

22 THE COURT: Okay.

23 Let's have rebuttal reports by September 26, 2025, and
24 surrebuttals by October 16, 2025.

25 One thing for both sides is: The parties should

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1 understand, especially because we're doing rebuttal and
2 surrebuttal reports, that, at trial, the experts are going to
3 be strictly limited to what is in their reports. So,
4 objection; scope, I'm going to ask for the page and line number
5 from the expert report, and no one is going to be able to
6 deviate from the opinions expressed in the reports. Okay?

7 Fact discovery and depositions by June 27, 2025.

8 Ms. Sweeney, I take it that you want to make sure that
9 before you get into experts, that you just have fact discovery
10 completed without anything outstanding?

11 MS. SWEENEY: Yes, that's it, your Honor. We want to
12 make sure that the experts have access to all the discovery
13 material. And, also, we think it's more efficient because then
14 the experts won't have to be supplementing and amending their
15 reports.

16 THE COURT: I think that makes a lot of sense. So
17 let's have fact discovery and depositions by June 27, 2025.
18 Although the parties can, by mutual agreement, agree to
19 reasonable extensions of those if there are a few straggling
20 witnesses who need to have their depositions taken after that
21 deadline, that's certainly fine.

22 And we covered the protective order.

23 The only guidance I'll give the parties is, especially
24 as to 30(b)(6) topics and objections, please don't spend months
25 and months meeting and conferring over those. Have the

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1 meet-and-confer, talk about it with each other. If you can't
2 reach a resolution in short order, we are here, we are always
3 here. We're here, we're here to be of service, so you can come
4 find us, and we will make sure that you can get a quick answer.
5 Because one of the things I most appreciate in what the parties
6 have proposed is that they have this case with discovery being
7 completed next year. I was worried that there was going to be
8 a schedule proposed that would have discovery going on until
9 2035, and so I am pleased that you have this case in line to be
10 tried either in late -- well, it looks like early 2026, which I
11 think is appropriate, given the scope of this case.

12 So, the bottom line is on discovery disputes, follow
13 the individual practices, but just come to the Court quickly so
14 that we can get a resolution of it promptly.

15 Mr. Marriott, any other issues from the joint letter
16 or that you have at this juncture that you need any resolution
17 of?

18 MR. MARRIOTT: Your Honor, the only other issue on
19 which we were interested in a little bit of guidance from the
20 Court was the lead trial counsel issue.

21 So, we want to just understand a little bit better how
22 we can meet the Court's needs in that respect. At the present
23 time, we have two firms, we have two defendants. We have
24 someone from Cravath who's lead trial counsel for purposes of
25 your Honor's rules for Ticketmaster and someone for

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1 Live Nation. And we're just wondering if there may be any
2 flexibility in that approach so that we can make sure we're
3 both meeting your Honor's needs and also dealing with the
4 challenges that arise in trying to manage these and other
5 cases.

6 THE COURT: No, that's fine. So that would be you and
7 Mr. Pfeiffer?

8 MR. PFEIFFER: That's correct, your Honor.

9 THE COURT: That's fine.

10 And, Ms. Sweeney, obviously, the same on your end. If
11 there happens to be a colead counsel on your end, then that's
12 perfectly appropriate, as long as we know who that person is.

13 MS. SWEENEY: Thank you, your Honor.

14 MR. MARRIOTT: Thank you, your Honor.

15 THE COURT: Okay, great.

16 One thing I'll say, especially given that we have
17 maybe 600 hours of depositions in this case, and I'm sure there
18 will be lots of disputed issues and hearings and other
19 proceedings in this case, is that try to let the young lawyers
20 have some standup time or time taking depositions and defending
21 depositions. If there are discovery disputes, I'd love to hear
22 from the young lawyers on those issues. It's great experience
23 for them. And just in case your respective clients are
24 concerned that their interests will not be served by having a
25 young lawyer present those issues, I can guarantee you that the

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1 Court, because I'm telling you this, will be especially
2 attentive to your arguments on both sides if I know that you
3 are providing an opportunity to a younger lawyer to advance
4 those arguments. So I'll just leave you with that.

5 Otherwise, Ms. Sweeney, any issues that we need to
6 tackle today?

7 MS. SWEENEY: Your Honor, we talked about the motion
8 that Mr. Marriott said that he is going to have ready shortly
9 regarding the consent decree, but we don't have a lot of
10 information about additional motions that the defendants might
11 raise, and so we would request that we have four weeks to
12 respond to any such motions to dismiss. They alluded to them
13 in a vague way, so we'd like a little more time.

14 THE COURT: No, thank you for reminding me.

15 So, Mr. Marriott, let me ask you this: You mentioned
16 a motion to dismiss. The one issue that you mentioned was
17 whether the *Trinko* case might foreclose the tie-in claim; is
18 that right?

19 MR. PFEIFFER: That's correct, your Honor.

20 THE COURT: Mr. Pfeiffer?

21 MR. PFEIFFER: Sorry, I know we're crossing you up.

22 Yes, that's one we have identified at this point that
23 we think is likely. We're not expecting, from what we've
24 heard, that the amended complaint will change the nature of
25 that claim, and, to us, that strays over into the territory of

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1 the type of foresharing that *Trinko* forecloses. So we expect
2 that. We also think that there may be at least some of the
3 state claims that do not state a claim under the state laws
4 under which they're brought. That's as much as we've
5 identified. We're not anticipating, at this point, a motion to
6 dismiss that would resolve the entirety of the case.

7 THE COURT: Okay.

8 So here's my question for you: An amended complaint
9 is going to come out in a month. Do you want to put in a
10 letter to the Court identifying the issues as to which you
11 would contemplate moving to dismiss and put that on the docket?
12 The upside for you is that if you do that, let's say, within
13 two weeks, the government plaintiffs will know what arguments
14 you're going to make, they will then amend. If they cannot
15 overcome your arguments on a motion to dismiss, you would have
16 a good argument that those claims should be dismissed with
17 prejudice, as opposed to advancing those arguments after the
18 amended complaint is filed, in which case, the government
19 plaintiffs will say, well, now that we know what the arguments
20 are, if you dismiss our complaint, it should be without
21 prejudice so that we can refile.

22 So that's just a suggestion on your side. I just want
23 to make sure you're aware that if you do that, you'll just have
24 a different argument down the road. From the government's
25 perspective, you'll obviously have a better sense of what the

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1 arguments are going to be – exactly what, Ms. Sweeney, you
2 raised – in terms of knowing what the arguments are that are
3 going to be raised so that you will have a chance to address
4 those issues in your amended pleading.

5 So, it would seem to benefit both sides, and make sure
6 that we can just keep the schedule that we're putting in place.
7 So, I'll leave that to you. I don't need your answer as to
8 whether that's something that you would want to do. You would
9 need to do it within two weeks to make sure that Ms. Sweeney
10 and her colleagues have an appropriate opportunity to consider
11 those arguments and supplement their pleading, if they need to.

12 MR. PFEIFFER: Thank you, your Honor. We very much
13 appreciate the idea.

14 I won't commit to it right now, but I'm certainly
15 going to talk to my client about it.

16 THE COURT: Okay, good.

17 And just the last point, since you raised it in the
18 joint letter, can you explain to me how *Trinko* would apply to
19 the tie-in claim that's alleged in the complaint, just so I
20 understand that? Because, as I understood *Trinko*, it involved
21 a situation where there was a refusal to deal with competitors,
22 there was a requirement to deal with competitors that was
23 imposed by a different law, and the court was addressing
24 whether that was also a violation of the antitrust laws. They
25 held that under the antitrust laws, there's no duty to deal

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1 with the competitor – that's the language that you rely on.
2 The tie-in claim here, as I understand it, has to do with the
3 requirement for those who wanted to use amphitheaters that were
4 within Live Nation's control, having to also use the concert
5 promotion services. So it had to do with third parties.
6 That's the stage-setting. So now, begin scene, you can tell me
7 what the argument would be.

8 MR. PFEIFFER: Let me go back briefly to *Trinko*,
9 because I actually was on the opposite side of things in those
10 days, but was very involved in related cases.

11 *Trinko* went broader, I think, than people expected.
12 We thought it was going to be about the communications act of
13 1996. It turned out to be about the duty to make life easier
14 for your rivals. I think that's where the claim, as it's
15 framed in the complaint, runs afoul of *Trinko*, that even though
16 there are some third parties involved, the duty that's actually
17 trying to be imposed here is for us to deal with companies that
18 are rivals of ours. And that's what we think *Trinko* does not
19 allow them to do, and calling it a tie-in claim doesn't change
20 our freedom to refuse to deal with those rivals.

21 THE COURT: Can you just map that onto the allegations
22 of the tie-in claims? I've got you there. The thing I needed
23 some help with was just how that principle maps onto the tie-in
24 claim that is actually alleged in the complaint.

25 MR. PFEIFFER: I apologize, your Honor, I'm not sure

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1 that I'm sufficiently prepared to do that today.

2 THE COURT: Okay, understood.

3 That's not an issue, and it will be reflected,
4 perhaps, in the letter that comes out in a couple of weeks,
5 but, in any event, if there's a motion to dismiss, then you'll
6 raise that argument, and we'll consider it.

7 MR. PFEIFFER: Thank you, your Honor.

8 THE COURT: Thank you.

9 Mr. Marriott or Mr. Pfeiffer, any further issues on
10 your end?

11 MR. MARRIOTT: Nothing today, your Honor. Thank you.

12 MR. PFEIFFER: No, your Honor. Thank you.

13 THE COURT: And, Ms. Sweeney, anything else on your
14 end?

15 MS. SWEENEY: Nothing, your Honor. Thank you.

16 THE COURT: Okay.

17 Well, again, I really appreciate everyone coming in.
18 Anything further from the states?

19 MR. KASHA: No, your Honor. Thank you.

20 THE COURT: Okay. I apologize for that. Thank you.

21 And thank you, everyone, for coming in. Again, I
22 really appreciate the materials in advance of the conference.
23 It's very helpful and shows a lot of hard work from the
24 parties. I really appreciate it. Thank you.

25 COUNSEL: Thank you, your Honor. (Adjourned)